

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

STATE OF TEXAS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:18-CV-68
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
	)	
Defendants,	)	
	)	
KARLA PEREZ, <i>et al.</i> ,	)	
	)	
Defendant-Intervenors,	)	
and	)	
	)	
STATE OF NEW JERSEY,	)	
	)	
Defendant-Intervenor.	)	

**STATE OF NEW JERSEY’S RESPONSE TO PLAINTIFF STATES’  
MOTION TO LIFT THE STAY AND SET A STATUS CONFERENCE**

Defendant-Intervenor State of New Jersey respectfully submits this Response to the Plaintiff States’ “Motion to Lift Stay and Set Status Conference.” Dkt. 324.

In advance of making the Motion, counsel for Plaintiffs asked if the other parties would oppose a motion to: (1) lift the Court-ordered stay that is presently in place (and will automatically expire later this week); and (2) request a status conference. *See* Exhibit A. New Jersey informed Plaintiffs’ counsel that New Jersey would take no position on such a motion. *See id.* That remains New Jersey’s position. Thus, to the extent Plaintiff’s present motion seeks to lift the Court-ordered stay and request a status conference, New Jersey takes no position.

However, Plaintiffs’ actually-filed motion goes well beyond these two requests by requesting “that the Court enter a scheduling order that sets deadlines for cross-motions for

summary judgment so that the Court can enter a final judgment,” without any further discovery. Dkt. 324 at 2. Plaintiffs also request that the Court “enter factual findings based on the record already before it.” *Id.* Finally, Plaintiffs request that, notwithstanding that no motion for summary judgment has been filed, any party who may oppose such a motion on the grounds that further discovery is needed be required to “state with specificity what additional evidence it believes is necessary.” *Id.* at 3.

These additional requests for affirmative relief go well beyond the request to lift the stay or to set a status conference, and New Jersey opposes each of them.

This Court has already declined Plaintiffs’ request to expedite this case to final judgment based solely on the preliminary injunction record. *See* 8-8-18 Tr. at 6:3-9. Plaintiffs should not be permitted to circumvent that decision now.

This case is factually complex and the issues raised in this litigation are of exceeding national importance. The expedited and limited discovery conducted in advance of the preliminary injunction hearing—where, notably, discovery on the Federal Defendants, the parties who actually administer Deferred Action for Childhood Arrivals (“DACA”) and hold the most critical evidence, was restricted—already generated extraordinarily valuable evidence about DACA that was clearly relevant to the Court’s analysis on the motion for preliminary injunction. Moreover, Plaintiffs’ request that Defendant Intervenors “state with specificity what additional evidence [they] believe[] is necessary,” Dkt. 324 at 3, turns the ordinary discovery process on its head. This Court should permit the parties the time necessary to fully engage in the discovery process so that it can ultimately rule on a complete record, giving the parties a full and fair opportunity to be heard.

## CONCLUSION

New Jersey takes no position on Plaintiffs' Motion to the extent that it requests that the present stay be lifted and that a status conference be set. This was the extent of the relief requested by Plaintiffs' counsel prior to making the Motion. However, New Jersey opposes the Motion to the extent it requests any further relief, including that a briefing schedule for summary judgment be set before the parties have been permitted to complete discovery.

Dated: September 17, 2018

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Rachel Wainer Apter  
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Attorney-in-Charge  
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Newark, NJ 07101

*Attorneys for Defendant-Intervenor State of New Jersey*

**CERTIFICATE OF SERVICE**

I certify that on September 17, 2018, I caused this document (and exhibits hereto) to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Rachel Wainer Apter

Rachel Wainer Apter

# Exhibit A

**Kenneth Levine**

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**From:** Rachel Wainer Apter  
**Sent:** Wednesday, September 12, 2018 10:58 AM  
**To:** Nina Perales; Disher, Todd  
**Cc:** Robins, Jeffrey (CIV); Hu, Daniel (USATXS); Jeremy Hollander; Kenneth Levine; Celina Moreno; Alejandra Avila; Denise M. Hulett; Biggs, Adam; Bitter, Adam; Starr, Brantley; Douglas.Hallward-Driemeier@ropesgray.com; Emerson Siegle  
**Subject:** RE: Texas v. USA - Motion to Lift Stay

Todd,  
New Jersey does not take a position on the motion.

Best,  
Rachel

Rachel Wainer Apter  
Counsel to the Attorney General

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**From:** Nina Perales [<mailto:nperales@MALDEF.org>]  
**Sent:** Wednesday, September 12, 2018 10:56 AM  
**To:** Disher, Todd  
**Cc:** Robins, Jeffrey (CIV); Rachel Wainer Apter; Hu, Daniel (USATXS); Jeremy Hollander; Kenneth Levine; Celina Moreno; Alejandra Avila; Denise M. Hulett; Biggs, Adam; Bitter, Adam; Starr, Brantley; [Douglas.Hallward-Driemeier@ropesgray.com](mailto:Douglas.Hallward-Driemeier@ropesgray.com); Emerson Siegle  
**Subject:** [EXTERNAL] Re: Texas v. USA - Motion to Lift Stay

Todd,

Because the court's stay will lift automatically in the near future, we believe a motion is unnecessary and therefore oppose. Thank you,

Sent from my iPhone

On Sep 12, 2018, at 7:55 AM, Disher, Todd <[Todd.Disher@oag.texas.gov](mailto:Todd.Disher@oag.texas.gov)> wrote:

Nina,

We currently do not intend to appeal the ruling on the PI. That is why we are asking Judge Hanen to lift the stay so we can proceed in his Court.

Todd

**Todd Lawrence Disher**

Special Counsel for Civil Litigation  
Office of the Attorney General of Texas  
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[Todd.Disher@oag.texas.gov](mailto:Todd.Disher@oag.texas.gov)

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**From:** Nina Perales [<mailto:nperales@MALDEF.org>]

**Sent:** Tuesday, September 11, 2018 10:52 PM

**To:** Disher, Todd <[Todd.Disher@oag.texas.gov](mailto:Todd.Disher@oag.texas.gov)>

**Cc:** Robins, Jeffrey (CIV) <[Jeffrey.Robins@usdoj.gov](mailto:Jeffrey.Robins@usdoj.gov)>; Rachel Wainer Apter <[Rachel.Apter@njoag.gov](mailto:Rachel.Apter@njoag.gov)>; Hu, Daniel (USATXS) <[Daniel.Hu@usdoj.gov](mailto:Daniel.Hu@usdoj.gov)>; Jeremy Hollander <[Jeremy.Hollander@law.njoag.gov](mailto:Jeremy.Hollander@law.njoag.gov)>; Kenneth Levine <[Kenneth.Levine@law.njoag.gov](mailto:Kenneth.Levine@law.njoag.gov)>; Celina Moreno <[cmoreno@MALDEF.org](mailto:cmoreno@MALDEF.org)>; Alejandra Avila <[Aavila@MALDEF.org](mailto:Aavila@MALDEF.org)>; Denise M. Hulett <[Dhulett@MALDEF.org](mailto:Dhulett@MALDEF.org)>; Biggs, Adam <[Adam.Biggs@oag.texas.gov](mailto:Adam.Biggs@oag.texas.gov)>; Bitter, Adam <[Adam.Bitter@oag.texas.gov](mailto:Adam.Bitter@oag.texas.gov)>; Starr, Brantley <[Brantley.Starr@oag.texas.gov](mailto:Brantley.Starr@oag.texas.gov)>; [Douglas.Hallward-Driemeier@ropesgray.com](mailto:Douglas.Hallward-Driemeier@ropesgray.com); Emerson Siegle <[Emerson.Siegle@ropesgray.com](mailto:Emerson.Siegle@ropesgray.com)>

**Subject:** Re: Texas v. USA - Motion to Lift Stay

Todd,

Would you be able to clarify your statement that plaintiffs do not “presently” intend to appeal the ruling on the motion for PI? We understand that plaintiffs have a longer period in which to file an appeal under section 1292(a). Are you representing that Plaintiffs will not appeal the 8/31 PI order?

Thank you for any clarification you can provide, and adding our co-counsel at Ropes.

Sent from my iPhone

On Sep 11, 2018, at 11:31 AM, Disher, Todd <[Todd.Disher@oag.texas.gov](mailto:Todd.Disher@oag.texas.gov)> wrote:

Counsel,

We intend to file a motion to lift the stay and request a status conference with Judge Hanen at the Court’s earliest convenience, as Plaintiff States do not presently intend to appeal the ruling on our motion for a preliminary injunction. Please let me know whether you oppose such relief by 10:00 a.m. Central tomorrow (Wednesday).

Thank you,

Todd

**Todd Lawrence Disher**

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